

taught or suggested by the Lyden patent. That is, the Lyden patent does not teach or suggest an order receiving unit that receives order an order from a customer identifying a specific last.

Based upon a word search of the text-searchable copy of the Lyden patent at the U.S. Patent and Trademark Office Website (i.e., www.uspto.gov), it appears that Lyden patent uses the term “last” at the following locations within the body of the specification (i.e., excluding the Abstract, claims, and drawings):

- (1) Column 3, lines 2-9;
- (2) Column 6, line 65 to column 7, line 1;
- (3) Column 10, lines 33-37;
- (4) Column 11, lines 59-62;
- (5) Column 22, lines 17-20;
- (6) Column 22, lines 32-35;
- (7) Column 38, lines 22-25;
- (8) Column 38, lines 55-58;
- (9) Column 38, lines 63-67;
- (10) Column 45, lines 48-51;
- (11) Column 46, lines 26-32;
- (12) Column 61, lines 61-67;
- (13) Column 75, lines 63-66;
- (14) Column 78, line 57 to column 79, line 8;
- (15) Column 81, lines 47-53;
- (16) Column 106, lines 51-60;
- (17) Column 108, lines 16-22;
- (18) Column 110, lines 4-12;
- (19) Column 136, lines 21-23;
- (20) Column 136, lines 33-38;

- (21) Column 142, lines 21-27;
- (22) Column 149, lines 30-31;
- (23) Column 149, line 64 to column 150, line 2;
- (24) Column 160, line 65 to column 161, line 20;
- (25) Column 162, lines 32-35;
- (26) Column 162, lines 44-51;
- (27) Column 162, line 67 to column 163, line 5;
- (28) Column 163, lines 9-12;
- (29) Column 163, lines 16-19;
- (30) Column 163, lines 29-36; and
- (31) Column 177, lines 7-12.

In most of these locations, the term “last” is used in a definitional context (e.g., a figure shows a last, or an upper is connected to the last, etc.). The only portions of the Lyden patent that appear to provide a significant discussion of selecting a last based upon customer-related information occur at column 3, lines 2-9, and from column 78, line 57 to column 79, line 8. Neither of these sections would teach nor suggest receiving an order from a customer specifying a particular last.

For example, at column 3, lines 2-9, the Lyden patent states:

In contrast, the present invention permits a wearer to customize a preferred article of footwear. For example, *the length, width, girth, and configuration of the upper*, as provided by various last options, or by two or three dimensional modeling and footwear design equipment including computer software and data storage systems, or by two or three dimensional measurement devices such as scanners, as well as the type of footwear construction and design of the upper *can be selected by the consumer or wearer*. (See column 3, lines 2-9, *emphasis added*.)

Thus, this portion of the Lyden patent teaches that user can specify length, width, and girth dimensions, and an upper configuration. This information is then used (presumably by the

manufacturer) to select a last that corresponds to the dimensions and configuration provided by the customer.

From column 78, line 57 to column 79, line 8, the Lyden patent states:

Accordingly, *the raw data or feedback provided by an individual when transformed into information and intelligence* could possibly indicate the selection a lasting board 79 having American length size 11, last or foot shape number 3 from amongst a possible selection of thirty different last or foot shape configurations, and also indicate selection of the following code with respect to utilization of the various different positions and alternate openings 72: Code 1.1/2.2/3.2/4.2/5.2/6.1/7.2/8.2. In contrast, an different individual could require the same lasting board 79 having American length size 11, last or foot shape number 3, but a different code for optimal utilization of the various different positions and alternate openings 72, e.g., Code 1.2/2.1/3.1/4.2/5.3/6.1/7.2/8.2. Obviously, a different individual could require a lasting board 79 having a different length and also a different last or foot shape, and the data and preferences of different individuals can also indicate or result in the selection of different uppers 23 having different functions, designs, styles, materials, and sizes. (See column 78, line 57 to column 79, line 8, *emphasis added*.)

Also see column 83, lines 23-29, which states:

Given this collected raw data, *information and intelligence can then be created* including an individual record which could include a virtual model of an individual's feet. *This information and intelligence can be used to select one or more options with respect to a footwear last, or other footwear configuration* including length size, width, and girth measurements. (See column 83, lines 23-29, *emphasis added*.)

Thus, these portions of the Lyden patent teaches that raw data from a customer is converted into "information and intelligence," and that this derivative "information and intelligence" is used to select the last.

Nothing in the Lyden patent would teach or suggest that this raw data might include the specification of a particular last. The Lyden patent describes the raw data obtained from a

customer at, e.g., column 5, lines 1-20, which states:

Moreover, the present invention teaches a novel method of manufacturing articles of footwear, and also, a novel way of doing both retail and Internet business. *For example, the anatomical features, configuration, and dimensions of a given wearer's foot and any other special needs, requirements, or preferences can be recorded* by direct communication, observation, and measurement in a retail or medical setting, or alternately, by a wearer or other individual within their home or other remote site, *and this data can be used to generate information and intelligence relating to the manufacture of a custom article of footwear.* Conventional measuring or reproduction means such as rulers, measuring tapes, Brannock devices, two or three dimensional scanners, pressure sensors, infrared thermography, stercolithography, photographs, photocopies, FAX e-mail, cameras, images, tracings, video, television, computers and computer screens, software, data storage and retrieval systems, templates, molds, models, and patterns can be used to help determine and make selections relating to an individual's foot shape, length, width, girth, and the like. (See column 5, lines 1-20, *emphasis added.*)

Also see column 82, line 34 to column 83, line 22, which states:

The present invention teaches and makes possible not only a novel method of manufacturing articles of footwear, but also, a novel way of doing both retail and Internet business. *The configuration and dimensions of a given wearer's foot and any other special needs and requirements or wearer preferences can be recorded by direct observation and measurement* in a retail or medical setting, or by a wearer or other individual at their home or other remote site, and this data can be used to generate information and intelligence relating to the manufacture of an appropriate custom article of footwear for the wearer and intended end use. This information and intelligence relating to an individual wearer or target population can include a so-called soft virtual model that is created and maintained in computer software or other data storage and retrieval system for present and future use.

Conventional measuring or reproduction means including but not limited to rulers, measuring tapes, Brannock devices, two or three dimensional scanners, pressure sensors, infrared thermography, stercolithography, paper, photographs, photocopies, cameras, images, tracings, video, verbal communication, telephone, television, FAX, computers and computer screens, software, data storage and retrieval systems, e-mail, lasts, lasting boards, templates, molds, models, and patterns can be used, as well as other tangible mediums of expression, and the like. Some of the data which might be collected could include, but not be limited

to an individual's: foot length, foot width at one or more locations; foot girth at one or more locations; arch characteristics such as high arch, normal arch, or low arch; the presence of a varus or valgus condition; bunions; Morton's toe; two dimensional foot shape; three dimensional foot shape; data collected using F-scan equipment and software made by Tekscan, Inc. of Boston, Mass.; strike index, plantar pressure, and center of pressure data collected using Pedar or Emed equipment made by Novel Electronics, Inc. of St. Paul, Minn.; digital photographs or video images showing superior, inferior, anterior, medial, lateral, and perspective views of an individual's foot; video data collected of an individual while in motion using digital cameras; biomechanical analysis of an individual's motion such as rearfoot motion analysis, and possibly including top, bottom, side, frontal, rear, and perspective view using equipment and software made by manufacturers such as Mikromak GmbH, of Erlangen, Germany, Northern Digital of Waterloo, Ontario, Canada, Motion Analysis of Santa Rosa, Calif., VICON Motion Systems of Lake Forest, Calif., or Peak Performance Technologies, Inc., of Englewood, Colo.; and, the individuals name; mailing and e-mail address; password, phone number; sex; weight; age; training age; walking or running pace; fit preference such as loose, normal, or tight; activity preference; affiliation; sizing system preference such as inches or metric; place of payment such as zip code or city; method of payment such as cash, check, debit card, credit card, and including the relevant account number and expiration date. (See column 82, line 34 to column 83, line 22, *emphasis added*.)

That the customer provides only dimensional information and preference information is emphasized elsewhere in the Lyden et al. patent. See, for example, column 12, lines 35-37 ("[c]ollecting data relating to an individual's preferences and the anatomical features and measurements of said individual's foot"), column 12, lines 63-65, column 84, lines 8-10, and column 84, lines 23-25.

Thus, with the Lyden patent, the customer provides dimensional information and preference information. From this raw data, someone other than the customer uses this raw data to create "information and intelligence," which may in turn be used to select a last for manufacturing footwear for the customer. The Lyden patent does not teach or suggest a shoe

distribution center that receives orders from customers identifying a particular last, as recited in claims 10-14.

The distinction between the claimed invention and the methodology disclosed in the Lyden patent is a subtle but significant one. For example, a first customer may prefer his shoes to be relatively tight-fitting over the top of his foot, but loose-fitting in the toe. A second customer, on the other hand, may prefer his shoes to be relatively loose-fitting over the top of his foot, but tight-fitting in the toe. If the two customers have the exact same foot size, they will produce the exact same dimensional information. Further, because both customers prefer to have some portion of their shoes tight-fitting, both customers might express a preference for tight-fitting shoes when asked. With the methodology disclosed in the Lyden patent, both customers would then receive shoes made from the same last. Obviously, at least one of the customer would be dissatisfied with his shoes, and both customer might even be unhappy (e.g., the shoes might be tight-fitting at both the top of the foot and in the toe).

According to various embodiments of the invention as recited in claims 10-14, however, the first customer could submit a footwear order specifying a last that he knows will produce shoes that are relatively tight-fitting over the top of his foot, but loose-fitting in the toe. Similarly, the second customer could submit a footwear order specifying a different last that he knows will be relatively loose-fitting over the top of his foot, but tight-fitting in the toe. Unlike with the methodology taught in the Lyden patent, both customers would be satisfied with the fit of their respective footwear.

Applicants therefore submit that the Lyden patent does not teach or suggest the features

of the invention recited in claims 10-14. Applicants therefore request that the rejections of these claims over the Lyden patent be withdrawn.

In view of the above remarks, Applicants respectfully submit that all of the claims under consideration are allowable, and that this application is therefore in condition for allowance.

Favorable action in this regard is courteously requested at the Examiner's earliest convenience.

Respectfully submitted,

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